

Before the
Federal Communications Commission

Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations)

(Rose Hill, Trenton, and Aurora
North Carolina))

MM Docket No. 95-88

RM-8641

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: Chief, Allocations Branch

COMMENTS AND COUNTERPROPOSAL

of

AURORA BROADCASTING

Aurora Broadcasting ("Counterproponent"), hereby submits Comments and a Counterproposal in response to the Commission's **Notice of Proposed Rule Making** ("**NPRM**"), DA 95-1277, released June 19, 1995. Comments and Counterproposals are due by August 10, 1995, so this pleading is timely filed.

Background

In the **NPRM**, the Commission, at the request of Duplin County Broadcasters ("DCB"), licensee of WBSY(FM), Rose Hill, North Carolina, proposed the reallocation of FM Channel 284A from Rose Hill to Trenton, North Carolina, as a Class C2 allotment. The Commission also proposed the modification of WBSY's license to operate on Channel 284C2 at Trenton.

Counterproposal

Counterproponent herein proposes the allotment of Channel 283A to Aurora, North Carolina, instead of the allotment of Channel 284C2 at Trenton. The attached Technical

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Study shows that Channel 283A can be allotted to Aurora in compliance with all spacing constraints at a reference point of North latitude 35° 21' 03", West longitude 76° 49' 39", from which an operating station would deliver a 3.16 mV/m contour over the entire community.

This Counterproposal would bring first local service to Aurora, a town with a 1990 population of 654 persons. The Technical Study shows that Aurora is an incorporated town that provides police, fire, water and sewer services. The study reports that Aurora has a library, schools, and retail stores such as grocery, hardware and service stations, and that Aurora has five churches within its limits. Two new companies, a health center and Central Transport, have recently opened within the town limits. Aurora township has a population of approximately 4,000 persons.

Aurora is not located within or near any Urbanized Area as that term is defined by the U.S. Department of Census.

If the Commission allots Channel 283A to Aurora, the Counterproponent, or an entity with which the Counterproponent is affiliated, will promptly file an application for construction permit for a new FM station on the channel, and upon grant, will construct and operate the facility.

Discussion Of Public Interest Analysis

The allotment of Channel 283A to Aurora is preferred over the substitution of Channel 284C2 at Trenton and removal of Channel 284A from Rose Hill. Rose Hill has a population of 1,287 persons while Trenton is a tiny community with a population of only 284 persons. It is a "quiet village" as defined by the Commission. Under the Commission's "quiet village"

doctrine, the Commission will not award a dispositive §307(b) preference to a party proposing first aural service to a town that does not meet the Commission's definition of a "community". See, Reeder v. FCC, 865 F. 2d 1298, 1305 (D.C. Cir. 1989)(per curiam). In this case, DCB has not met its burden of demonstrating that Trenton is a separate "community" for allotment purposes. The Commission has a long-standing policy of requiring that "allotments be made to communities composed of geographically identifiable population groupings." See, Table of Allotments (Cal-Nev-Ari, Nevada, et. al), DA 95-1549, at ¶12, released July 17, 1995. In its Petition For Rulemaking, DCB merely states that Trenton is the county seat of Jones County and that it had a 1990 population of 284. Such evidence is hardly sufficient to support the conclusion that Trenton is a "community." Mere geographic location is not sufficient to warrant a finding of community status. See, Table of FM Allotments (Hannibal, OH), 69 RR 2d 113 (1989). Furthermore, while Trenton may be a county seat, there is no evidence that the town of Trenton has its own local government or any local businesses, civic organizations, or other political, economic or social components commonly associated with community status. There is no evidence that Trenton exists but for its geocentric location relative to Jones County's borders. See, Table of FM Allotments (Trade, TN, et. al), 69 RR 2d 1731 (1989); see also, Table of Allotments (East Hemet, CA), 67 RR 2d 146 (1989). Without evidence of community attributes, it is impossible for the Commission to determine whether Trenton qualifies as a "community" for allotment purposes or whether it is merely a "quiet village" not worthy of such a designation. See, Table of Allotments (East Hemet, CA, et al.), *supra*; see also, Beacon Broadcasting, 2 FCC Rcd 3469 (1987), recon. denied, 2 FCC Rcd 7562 (1987). It is Conterproponent's position that a

community such as Trenton with a very small population, ill-defined boundaries and undemonstrated political, economic, social indicia is not a "community" for allotment purposes, and DCB's proposal cannot receive a dispositive §307(b) preference. See, Sunshine Broadcasting, Inc., 2 FCC Rcd 7559, 7560 (1987)(subsequent history omitted).

DCB's claim that its proposal would provide service to 336,401 persons instead of 36,354 must be evaluated in light of the Technical Study that shows that the extra population comes from counties that are already well served by seventeen (17) FM, eleven (11) AM, and three (3) television stations. Additionally, there are several pending applications seeking construction permits for facilities in the area. The population gain, therefore, would do little more than add an additional FM station to an already well-served area.

Under the precedent in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), this Counterproposal is preferred to DCB's proposal. First full-time aural service is the Commission's number one allotment priority. The proposed allotment of a first aural service to Aurora, North Carolina, is preferred to DCB's plan which would merely improve existing service. The case is made more egregious by DCB's plan to leave Rose Hill without full time aural service. This loss of full time service weighs heavily against DCB's proposal.

Additionally, Counterproponent's plan would result in first service to a community that is larger than Rose Hill. Trenton's diminutive population and its proximity to nearby New Bern, North Carolina, suggests that it is a mere "isolated population" pocket that is dependent upon a larger, nearby city. See, Faye and Richard Tuck, Inc. 3 FCC Rcd 5374 (1988) and Table of Allotments (Cal-Nev-Ari, Nevada, et. al), supra. As such, Trenton does

not qualify as a "community" and the Commission should deny DCB's proposed reallocation of Channel 284C2 to Trenton. Counterproponent's proposal will provide first full time service to a qualified "community" and will satisfy the Commission's allotment priorities. See, Revision of FM Assignment Policies and Procedures, supra.

Conclusion

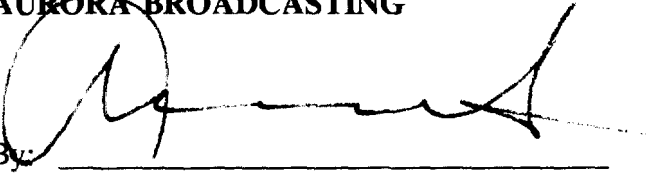
As demonstrated herein, DCB's proposed reallocation of Channel 284C2 to Trenton, North Carolina, does not constitute a preferential arrangement of allotments. Trenton, North Carolina, is not a "community" for allotment purposes. It is well served by other stations and does not merit a radio station to serve only 284 persons. Counterproponent's proposal to allot Channel 283A to Aurora, North Carolina is a better use of spectrum since it will bring first full time service to a bona fide community that deserves local service.

WHEREFORE, the above facts considered, Aurora Broadcasting, hereby respectfully requests that the Commission deny DCB's Petition For Rulemaking and instead make the following change to the FM Table of Allotments:

| <u>Community</u> | Channel No. | |
|------------------------|----------------|-----------------|
| | <u>Present</u> | <u>Proposed</u> |
| Aurora, North Carolina | ---- | 283A |

Respectfully submitted,

AURORA BROADCASTING



By: _____

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August 10, 1995

COUNTER PROPOSAL
MM Docket No. 95-88 - RM-8641
Assign Channel 283A
Aurora, North Carolina
August 1995

INTRODUCTION

This Technical Study supports the Counter Proposal by Aurora Broadcasting ("AB") to assign Channel 283A to Aurora, North Carolina instead of the substitution proposed by Duplin County Broadcasters ("petitioner") to substitute Channel 284A at Rose Hill, North Carolina for Channel 284C2 at Trenton, North Carolina.

Channel 283A can be assigned to Aurora which will meet all FM spacing under Section 73.207 of the Commission's Rules (See Exhibit #2). We propose to use a reference point of North Latitude 35° 21' 03" and West Longitude 76° 49' 39". This location is 325° and 6.9 km (4.3 mi.) from the center of Aurora. Assuming a maximum Class A facility (6 kW @ 100 m HAAT) the 3.16 mV/m contour will extend to a distance of 16.1 km. We show in Exhibit #1 that the city grade contour of the proposed facility will easily provide service to the entire community.

This Counter Proposal will add first local service to Aurora, North Carolina. Aurora is an incorporated community and provides municipal services. We talked with Laura Jordan at the Town of Aurora. She explained that the town provides normal services to the community such as police, fire, water, sewer services. The community has a library, schools, and retail stores such as grocery, hardware and service stations. The town has 5 churches within its limits. Two new companies have recently opened within the town limits, one being a Health Center and the other being Central Transport. Laura Jordan also stated that business in Aurora supplies jobs to people from other nearby communities.

The population of Aurora is 654 persons within the 1 mile square town limits. The Aurora township has a population of approximately 4,000 persons. Aurora is not located within or nearby any urbanized area.

Once Channel 253A is assigned to Aurora, AB will timely file an application for these proposed facilities.

DISCUSSION OF THE TWO PROPOSALS

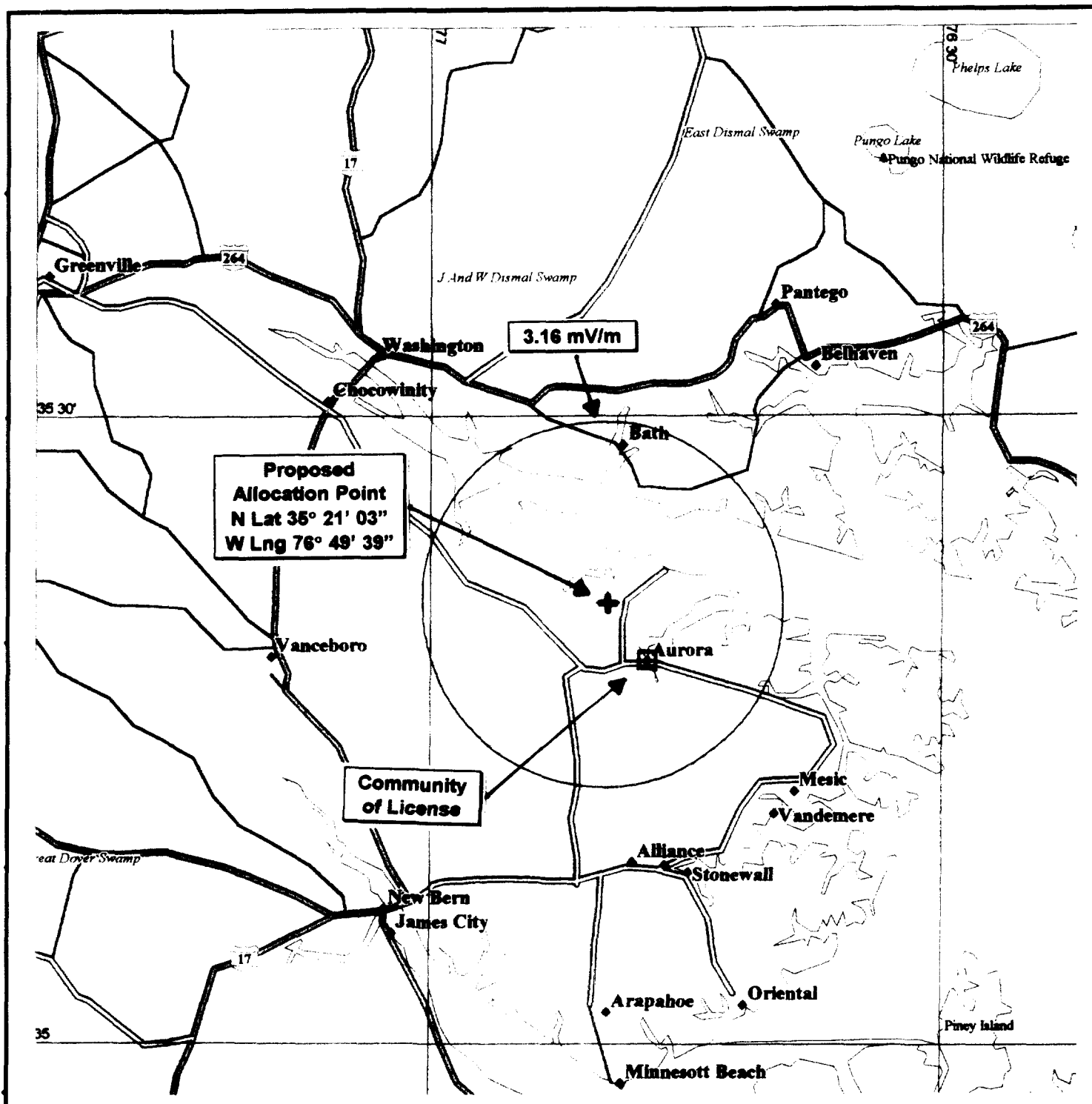
The petitioner proposes to delete an FM Channel (284A) from Rose Hill, North Carolina. Rose Hill has a population of 1,287 persons. This move will leave Rose Hill with no full-time aural service (WEGG-AM is a daytime only station). The Petitioner proposes to assign Channel 284C2 to Trenton, North Carolina. Trenton is a tiny community with a population of 284 persons. The petitioner's justification for abandoning Rose Hill for Trenton is that the proposed Class C2 facility will provide service to 336,401 persons instead of 36,354. However, if one looks closer it is clear to see the extra population comes primarily from surrounding Onslow, Craven & Lenor counties which include the cities of Jacksonville, New Bern & Kinston. This same area is currently served by 17-FM, 11- AM and 3 TV stations. Additionally, there are several other pending applications and construction permits for facilities in this area. The population gain claimed by the petitioner will do little more than add an additional FM station to an area that is already well served with media.

The AB proposal is in keeping with the Commission's policy of preferring to add first local service to a community rather than improving existing service. In this case this fact is even more evident when considering the removal of service to Rose Hill. The community of Rose Hill has the right to expect continued service from WBSY-FM since that station has already been providing full-time service to Rose Hill. AB's proposal will add first service to Aurora, a larger community than Trenton, and will leave Rose Hill with its only full-time service.

BROMO COMMUNICATIONS, INC.



William G. Brown
Technical Consultant to Aurora Broadcasting



3.16mV/m Contour

NOTE: This contour assumes a maximum Class A facility (6KW - 100M HAAT) at the proposed Reference site.

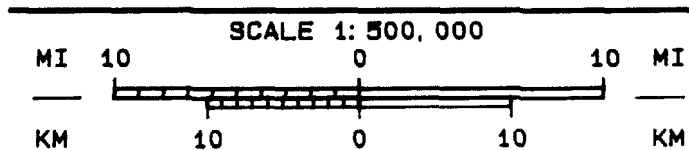


EXHIBIT #1

Counter Proposal
MM Docket #95-88, Rm-8641
Assign Channel 283A
Aurora, North Carolina
August 1995

BROMO
COMMUNICATIONS

BROADCAST
 TECHNICAL CONSULTANTS

EXHIBIT #2
COUNTER PROPOSAL
MM Docket #95-88, RM-8641
Assign Channel 283A
Aurora, North Carolina

| | | |
|------------------------------------|-----------------------|-----------------|
| REFERENCE | | DISPLAY DATES |
| 35 21 03 N | CLASS A | DATA 07-28-95 |
| 76 49 39 W | Spacing under §73.207 | SEARCH 08-09-95 |
| ----- CHANNEL 283 -104.5 MHz ----- | | |

| CALL | CH# | CITY | STATE | BEAR' | D-KM | R-KM | MARGIN |
|--------------------------|--------------|----------------|-----------|--------------|--------------|--------------|-----------------|
| ¹AD284 | 284C2 | Trenton | NC | 237.5 | 58.69 | 106.0 | -47.31 * |
| WFXK | 282C1 | Tarboro | NC | 304.4 | 135.38 | 133.0 | 2.38 < |
| WMSQ.A | 286C2 | Havelock | NC | 169.0 | 59.01 | 55.0 | 4.01 |
| ALOPEN | 286C2 | Havelock | NC | 168.9 | 59.06 | 55.0 | 4.06 |
| WNVZ | 283B | Norfolk | VA | 14.0 | 193.04 | 178.0 | 15.04 |
| WMSQ | 285A | Havelock | NC | 192.6 | 48.59 | 31.0 | 17.59 |
| ALOPEN | 285C2 | Hertford | NC | 20.0 | 93.79 | 55.0 | 38.79 |
| WKJE.A | 285C2 | Hertford | NC | 30.8 | 101.64 | 55.0 | 46.64 |

¹ Original Proposal by Duplin Broadcasters to substitute CH-284C2 at Trenton for CH-284A at Rose Hill

CERTIFICATE OF SERVICE

I, Denise Felice, a secretary in the law firm of Smithwick & Belendiuk, P.C., certify that on this 10th day of August, 1995, copies of the foregoing were mailed via first class mail, postage pre-paid, to the following:

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Denise Felice